

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:

DEREK M. STEPHENS,

Debtor.

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CASE NO. 05-68133 JPK
Chapter 11

ORDER

This case came before the Court on the Application by the debtor to employ the Law Firm of Burke Costanza and Cuppy LLP as counsel for the Debtor-in-Possession, filed on January 20, 2006.

The Court having reviewed the same finds that it does not comply with Fed. R. Bk. P. 2014(a).

Federal Rule of Bankruptcy Procedure 2014(a), as amended effective August 1, 1991, provides as follows:

(a) Application for and Order of Employment. An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professionals pursuant to §327, §1103, or §1114 of the Code shall be made only on application of the trustee or committee. The application shall be filed and, unless the case is a chapter 9 municipality case, a copy of the application shall be transmitted by the applicant to the United States Trustee. The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee or any person employed in the office of the United States Trustee. The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, or any other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee.¹ (Emphasis supplied).

Said Application does not comply with N.D.Ind.L.B.R. B-2014-1 in the following respects:

¹Federal Rule of Bankruptcy Procedure 2014 is supplemented by N.D. Ind. L.B.R. B-2014-1.

1. The affidavit of the proposed professional does not state whether or not the debtor has any affiliates.

2. The affidavit of the proposed professional does not state the circumstances of representation or employment by the debtor during the 12 months prior to the petition.

In order to conform to Fed.R.Bankr.P. 2014(a), it is not sufficient for either the application or the verified statement of the attorney to merely recite that the attorney does not represent any interest adverse to the debtor or its estate. In both the application and the verified statement of counsel, counsel's connections with "the debtor, creditors, or any other party in interest, their respective attorneys and accountants, the United States Trustee, or any other person employed in the office of the United States Trustee" must be disclosed. If the proposed counsel has no connections with any of those, including representation of the debtor prior to the filing of the bankruptcy case, both the application and the verified statement of counsel should state to the effect that he "has no connections with, or prior connections with, the debtor etc. [listing the designated entities about whom connections must be disclosed], or specifically identify the connections which counsel had or has with each of those designated entities".

It will be necessary for the proposed counsel to waive the balance owed by the debtor for pre-petition services, as stated in paragraph 3 of the Affidavit of Attorney.

Accordingly, said Application is denied without prejudice to filing an Amended Application.

SO ORDERED.

Dated at Hammond, Indiana on January 30, 2006.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:

Debtor, Attorney for Debtor

Trustee (if applicable), U.S. Trustee

Attorney and/or Chairman of Creditors' Committee (if applicable)

Rev. 03/03/2004